

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

GLORIA RYAN

PLAINTIFF

V.

CIVIL ACTION 5:03-CV00225-DCB-JCS

EQUICREDIT CORPORATION OF AMERICA,  
NATIONSCREDIT FINANCIAL SERVICES  
CORPORATION d/b/a EQUICREDIT  
HOWARD CONSTRUCTION COMPANY,  
GATEWAY MORTGAGE, LEON HOWARD, in his individual capacity  
DON HINSON, in his individual capacity,  
LOUISE BARNES, in her individual capacity,  
And JOHN DOES 1-50

DEFENDANTS

RENEWAL OF MOTION TO DISMISS FOR FAILURE TO PROSECUTE  
MOTION TO STRIKE INAPPROPRIATE PLEADING BY GLORIA RYAN

COME NOW, GATEWAY MORTGAGE AND DON HINSON, in his  
individual capacity, by and through undersigned attorney, and file this their  
RENEWAL OF MOTION TO DISMISS FOR FAILURE TO PROSECUTE,  
MOTION TO STRIKE INAPPROPRIATE PLEADING and for cause would  
show unto the Court as follows:

1.

The plaintiff herein, Gloria Ryan has effectively abandoned this claim  
through her inaction, and her bankruptcy filing n March 5, 2004, in Cause No. 04-  
01278-WEE in the Southern District of Mississippi, Western Division.

2.

On or about February 17, 2005, Mr. Harry M. McCumber, attorney for plaintiff Gloria Ryan, filed a motion to withdraw; on or about February 18, 2005, Judge David Bramlette issued an order allowing Mr. Harry M. McCumber to withdraw and ordering plaintiff Gloria Ryan to secure new counsel within thirty days. Plaintiff Gloria Ryan has failed to do so.

3.

The Trustees have filed a Notice of waiver and Abandonment of Claims in this matter, on October 28, 2005, indicating in paragraph 11, “The Trustee believes that the claims of the Ryan Made against the Equicredit Defendants in the instant litigation have little value, and it is not in the best interest of Ryan’s bankruptcy’s estate or its creditors that the Trustees pursue the instant litigation on behalf of Ryan’s bankruptcy estate.”

4.

On January 10, 2006, the Court issued a Notice of Hearing directing all parties to be and appear in Natchez, Mississippi for a status conference on January 31, 2006. On January 23, 2006, Defendant Gateway Mortgage filed a Motion to Dismiss for Lack of Prosecution. Ms. Gloria Ryan failed to appear at the hearing after being notified by certified mail of the Motion to Dismiss.

5.

On March 9, 2006, the Court entered an Order deferring ruling on the Motion to Dismiss for Lack of Prosecution and giving the plaintiff Gloria Ryan ten days to respond and show cause why the Motion to dismiss should not be granted.

7.

Plaintiff Gloria Ryan, pursuant to Rule 7 of the Federal Rules of Civil Procedure, has failed to respond with an appropriate pleading. Plaintiff's email to Judge Bramlette, dated March 10, 2006, does not constitute a proper pleading under Rule 7 of the Federal Rules of Civil Procedure and should be stricken.

WHEREFORE, PREMISES CONSIDERED, Defendants Gateway Mortgage and Don Hinson, in his individual capacity, pray the Court will dismiss with prejudice the action herein against them for failure to prosecute by Gloria Ryan, election not to prosecute by the Trustee, withdrawal of plaintiff's attorney and failure of plaintiff Gloria Ryan to hire and enroll new counsel within 30 days of February 18, 2005, failure of plaintiff Gloria Ryan to be and appear in court on January 31, 2006, and upon just cause cited by defendants Gateway Mortgage and Don Hinson, and strike plaintiff's email response as an inappropriate pleading.

GATEWAY MORTGAGE and  
DON HINSON, in his individual capacity

By: s/ Eileen Mary Maher

Certificate of Service

I, Eileen Mary Maher, do hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification to the following:

H. Hunter Twiford – [htwiford@mcglinchy.com](mailto:htwiford@mcglinchy.com)

And by other means (U.S. mail, postage prepaid) to the following:

Gloria Ryan  
150 Tubman Circle  
Natchez, MS 39120  
Sent by certified mail, return receipt requested

J. Steven Smith  
5 Old River Place Suite 107  
Jackson, MS 39202-3434  
Attorney for Chapter 7 Trustee

Eileen Schaffer  
P.O. Box 1177  
Jackson, MS 39215-1177  
Attorney for Chapter 7 Trustee

This the 4th day of April, 2006.

s/ Eileen Mary Maher

